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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/690,409 | 10/17/2000 | Hans-Peter Wild | PA 30573 | 3320 |

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12/30/2003

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| EXAMINER |
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TRUONG, THANH K

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| ART UNIT | PAPER NUMBER |
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3721

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 26

Application Number: 09/690,409
Filing Date: October 17, 2000
Appellant(s): WILD ET AL.

Bryan J. Lempia
For Appellant

MAILED
DEC 30 2003
GROUP 3700

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 05, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the

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decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Claims 1-4 will stand or fall together.

Claim 5 will stand or fall alone.

Claim 6 will stand or fall alone.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,584,046

Geyssel

4-1986

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1-6 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 21.

With respect to claims 1-6, Geyssel discloses an apparatus for applying a drinking straw to a receiving surface of a stand up bag comprising: transfer means (figure 9) which rotates a transfer drum 20, stand up bag 12, drinking straw 11, supply of drinking straws 30, and conveying surface 13; the transfer means is arranged so that the drinking straw while being handed over encloses an acute angle θ (marked as θ by the examiner on figure 9) with the conveying surface. The angle θ corresponds to the angle formed by the stand up bag receiving surface and the opposite side surface of the bag lies on the conveying surface.

(11) Response to Argument

Appellant contends that Geyssel fails to disclose or suggest that the surface on which the bag lies is the surface opposite the straw receiving surface; the drinking straw while being handed over encloses an acute angle with the conveying surface (claims 1 and 5); and the drinking straw is applied to the other of the opposite non-planar side surface of each of the stand up bags (claim 6).

Examiner contends that Geyssel discloses the claimed invention for the following reasons:

Figure 9 shows that the receiving surface of the stand up bag 12 is generally opposite the surface that is resting on the conveyor, and forming an acute angle with the conveying surface.

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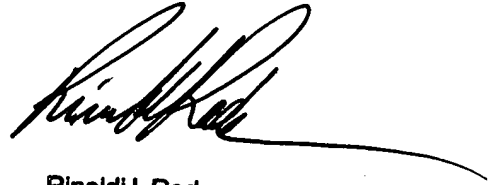
The abstract of Geyssel discloses that "the drinking straws (11) can be secured in different directions and on variously inclined surfaces of the package (12)", and on column 2, lines 24-26, "the applicator element and the drive system are installed together on a carrier that can be tilted about two perpendicular axes and which can be secured" (refer to figure 1).

Geyssel further discloses that the drinking straws can be attached to objects such as packages, bottles, bags, etc. (column 1, lines 42-45). The bottles discloses in Geyssel anticipated the non-plannar surface in claim 6.

Furthermore, the present claimed invention is an apparatus for applying a drinking straw to a receiving surface of a stand up bag. Therefore, the intended use of the apparatus is irrelevant to patentability of the apparatus, since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,





Rinaldi I. Rada
Supervisory Patent Examiner
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tkf

December 23, 2003

Conferees

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